

REMARKS

In response to the Office Action mailed on April 18, 2006, applicants elect with traverse Group II, claims 6-17. As a species of an animal based protein applicants elect eggs. The traversal is on the grounds that the patent office has not established that it would pose an undue burden to examine the full scope of the claimed invention.

As to the Election of Species Requirement, the Examiner is encouraged to examine the broadest possible scope of invention indicated by the elected species. In accordance with M.P.E.P. §803.02, the Examiner is reminded that, should no prior art be found which renders the invention of the elected species unpatentable, the search of the remainder of the generic claim(s) should be continued in the same application.

Additionally, applicants bring the attention of the Examiner to MPEP § 821.04, Rejoinder, which states that “if the elected invention is directed to the product and the claims directed to the product are subsequently found patentable, process claims [both process of making and using] which either depend from or include all the limitations of the allowable product will be rejoined.” If the restriction requirement is maintained at this point, rejoinder of the non-elected claim from group IV is respectfully requested at the proper time in accord with the rejoinder provisions of the MPEP.

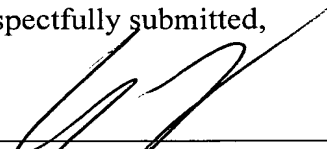
Applicants cancelled the claims grouped into groups I and III. However, applicants request that the new claim 26, which is directed to a food product comprising konjac glucomannan and insoluble fiber, which food product contains essentially no animal based protein, be also examined in this application. Applicants submit that it would not pose an undue burden on the PTO to examine the full scope of the present application.

Support for new claim 26 can be found in the specification, for example, on page 2, lines 6-8, from the bottom of the page, where it is disclosed that embodiments of the invention with carbohydrates may supply those carbohydrates as a water soluble or insoluble fiber or other forms with has minimal effect on elevating blood sugar; and on page 3, lines 9-11, it is taught that “in certain embodiments, water soluble or insoluble high fiber flours or other substances may be incorporated in various ingredients (e.g., konjak glucomannan) which may minimally elevate blood sugar.” The examples also teach the use of insoluble fiber and konjak glucomannan in the same embodiments. See, e.g., page 4, the last two lines of the first full paragraph, and page 5, the last two lines of the third paragraph, etc. Animal based proteins are used in several of the examples where the use of both insoluble fiber and konjak glucomannan are taught. Thus, the exclusion thereof has basis in the application. See

MPEP 2173.05(i) Negative Limitations, stating that "If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977) ("[the] specification, having described the whole, necessarily described the part remaining."). See also *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 738 F.2d 453 (Fed. Cir. 1984)."

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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